

April 7, 2004

Public Knowledge
1875 Connecticut Avenue, NW
Suite 650
Washington, DC 20009

Consumers Union
1666 Connecticut Avenue, NW
Suite 310
Washington, DC 20009

The Hon. Michael K. Powell
Chairman
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Dear Mr. Chairman,

We have learned that the Commission may consider at its next meeting a Notice of Inquiry (NoI) or Notice of Proposed Rulemaking (NPRM) that will address Digital Audio Radio content protection.

We also understand that this NOI/NPRM will center on proposals advocated by the Recording Industry Association of America (RIAA) that, while nominally concerned with distribution over the Internet, in fact will seek broader restrictions on digital copying and storage of content. In essence, we understand, the RIAA is seeking a “radio equivalent of the broadcast flag” designed to prevent consumer recording of broadcasts.

Public Knowledge and Consumers Union urge that the Commission avoid a rush to judgment in this matter, and that the Commission consider the question of mandatory content protection for digital radio in a Notice of Inquiry rather than in an NPRM, if at all.

As a purely factual matter, inadequate groundwork has been laid for an NPRM relating to content protection for digital audio radio — far less groundwork even than was done in the run-up to the Broadcast Flag regulation for digital television. Unlike the Broadcast Flag proceeding, for example, we have here no specific technological proposal to consider. Nor is there any call from members of Congress that the Commission act quickly. Moreover, Commission action to protect digital radio content will do nothing to increase the availability of spectrum — radio broadcasters will use the same spectrum for digital radio (and the same amount of spectrum) that they use now for analog radio. Finally, there is literally ***no evidence at all*** associating digital radio broadcasting with peer-to-peer file-sharing of music or other content.

As the recent workshop held by Commission staff clearly showed, there are neither pressing technological issues nor spectrum-related issues that require the Commission's immediate action to protect digital radio content. While we welcome a more in-depth discussion of the issue, the Commission should avoid deciding prematurely that the question of content protection for radio broadcasts is one that merits a rulemaking. Not nearly enough evidentiary spadework has been done for a rulemaking proceeding, and, as we saw in the workshop, there is broad skepticism among the majority of stakeholders whether the case for any rulemaking aimed at protecting radio content has been made.

Respectfully,



Michael Godwin
Senior Technology Counsel
Public Knowledge



Chris Murray
Legislative Counsel
Consumers Union

cc:

Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Mr. Matt Brill
Mr. Jordan Goldstein
Mr. Anthony Dale
Ms. Johanna Mikes
Mr. Robert Pepper
Mr. W. Kenneth Ferree
Mr. John Rogovin
Mr. Rick Chesson
Ms. Amy Nathan

Ms. Mary Beth Murphy
Ms. Susan Mort
Ms. Lori Holy
Mr. William Johnson
Ms. Alison Greenwald
Mr. John Wong
Mr. Jonathan Levy
Mr. Mike Perko
Ms. Deborah Klein
Mr. Thomas Horan
Mr. Steve Broeckaert
Mr. Michael Lance